



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Hibberd and the Department of Defence [2016] DHAAT 01 (17 December 2015)**

File Number(s)      2015/011

Re                      Mr Bradley John Hibberd  
                              APPLICANT

And                     **Department of Defence**  
                              RESPONDENT

Tribunal              Brigadier K.J O'Brien CSC (Presiding Member)  
                              Ms J. Schwager

Hearing Date        11 December 2015

#### **DECISION**

On 17 December 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Bradley John Hibberd is not eligible for the award of the Australian Active Service Medal 1945-75 with Clasp 'Thailand'.

#### **CATCHWORDS**

*DEFENCE AWARD – refusal to recommend the award of the Australian Active Service Medal 1945-75 with Clasp 'Thailand'*

#### **LEGISLATION**

*Defence Act 1903* as amended –ss 110V(1), 110VB(2), 110T  
*Defence Legislation Amendment Act (No 1) 2010* – Schedule 1 Part 2  
*Commonwealth of Australia Gazette (CAG) S18*, dated 19 January 1998,  
Letters Patent and Regulations for the Australian Active Service Medal  
1945-75  
*CAG S102, dated 27 March 2001*, Declaration and Determination under the  
Australian Active Service Medal 1945-75 Regulations for the medal with Clasp  
'Thailand'  
Declaration and Determination under the Australian Active Service Medal 1945-75  
Regulations

## **REASONS FOR DECISION**

### **Introduction**

1. The applicant, Mr Bradley John Hibberd (Mr Hibberd), seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for Australian Active Service Medal (AASM) 1945-75 with Clasp 'Thailand'.

2. Mr Hibberd applied to the Defence Honours and Awards Appeals Tribunal, through its website, on 16 March 2015 for a review of his eligibility for the AASM 1945-75 with Clasp 'Thailand'. This review is in response to a letter Mr Hibberd received from the Directorate dated 24 April 2015, advising him that he was not eligible for the award.

### **Tribunal Jurisdiction**

3. There is no dispute that the Tribunal has jurisdiction to review the Directorate's decision in regard to Mr Hibberd's application for the award of the AASM with Clasp 'Thailand'. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) of the Defence Act and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence or foreign award in response to an application. Regulation 93C of the *Defence Force Regulations 1952* defines a defence award as being those awards set out in Part 2 of Schedule 3. Included in the defence awards set out in Part 2 is the Australian Active Service Medal. Therefore the Tribunal has jurisdiction to review decisions in relation to this award.

### **Steps taken in the conduct of the review**

4. On 10 April 2015, Mr Hibberd provided further information in relation to his application for review and also asked whether the Tribunal could also review his eligibility for the Returned from Active Service Badge, which he believed he required to be placed on a list for a place in a Canadian War Veterans home. Mr Hibberd currently resides in Toronto, Canada.

5. On 7 May 2015, in accordance with the *Defence Honours and Awards Appeal Tribunal's Procedural Rules 2011*, as amended in 2013, the Tribunal wrote to the Secretary of the Defence Department advising him of Mr Hibberd's application for review and invited Defence to make submissions and provide the Tribunal with any material on which it sought to rely. A written submission was received from the Directorate on 17 June 2015.

6. Mr Hibberd was provided with a copy of the Defence Submission on 29 June 2015, and was requested to provide comments and to submit any further material he may have in support within 20 working days. Mr Hibberd was also invited to give oral evidence (by telephone) to the Tribunal on a date that was suitable to him and the Tribunal Members.

7. A follow-up letter was sent to Mr Hibberd on 3 September 2015 again requesting him to provide comments on the Defence submission. Mr Hibberd's comments on the Defence submission were received by the Tribunal on 3 September 2015.

8. The Tribunal met on 10 December 2015. During its meeting the Tribunal considered the material provided by Mr Hibberd and the Directorate. The Tribunal then heard oral evidence from Mr Hibberd by telephone on 11 December 2015.

### **Australian Active Service Medal 1945-75 Regulations**

9. The Australian Active Service Medal 1945-75 was created by Letters Patent, signed on 11 December 1997 by the Australian Prime Minister, upon approval from Her Majesty Queen Elizabeth II. The Regulations made under the Letters Patent to create the Clasp 'Thailand' were gazetted in *Commonwealth of Australia Gazette S102* on 27 March 2001. The eligibility for the Clasp 'Thailand' was declared to be for members of the Australian Defence Force engaged in Thailand at the Royal Thai Air Base (RTAB) at Ubon during the period 25 June 1965 until 31 August 1968.

10. *The Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75* (February 2000) by Major General The Honourable R F Mohr, investigated the anomalies that existed in relation to service in South-East Asia. In particular Chapter 6 looked at the Far-East Strategic Reserve – Thailand service at RTAB Ubon. This review determined the applicable periods for service as 'non-warlike' and 'warlike'. Accordingly, the regulations for the AASM 1945-75 with Clasp 'Thailand' was further amended by a Declaration and Determination dated 4 December 2012 to create the 'warlike' period from 31 May 1962 to 27 July 1962.

11. In summary, the nature of service classification for the service provided by Royal Australian Air Force (RAAF) personnel attached to RTAB Ubon in the 1960s was as follows:-

- 31 May 1962 to 27 July 1962 is classified as 'Warlike Service';
- 28 July 1962 to 24 June 1965 is classified as 'Operational Service'; and
- 25 June 1965 to 31 August 1968 is classified as 'Warlike Service'.

### **Defence records of Mr Hibberd's service**

12. On 11 August 1958, Mr Hibberd enlisted in the Permanent Air Force (PAF). On 10 August 1964 he discharged from the PAF and transferred to the RAAF Reserve. Mr Hibberd's overseas service included:

- a. Base Squadron Butterworth, Malaysia from 12 August 1963 to 10 September 1963; and
- b. Base Squadron Ubon, Thailand from 11 September 1963 to 3 January 1964.

13. For his service, Mr Hibberd has been awarded the following:

- Australian Service Medal 1945-75 with Clasps 'Thailand' and 'SE Asia'
- Australian Defence Medal

### **Summary of Claims of Mr Hibberd**

14. The essence of Mr Hibberd's written and oral submissions, is that 'it's difficult to appreciate the reasoning supporting those inclusive/exclusive qualifying dates prior to 1965 – particularly the short 1962 qualifying window'. He queried what actually changed, happened or occurred which would support those qualifying/disqualifying date breakdowns – and their status change?

15. Mr Hibberd stated that he did not understand any logic in the nature of classification being Operational and not Warlike during the period he was deployed to Ubon. During his oral evidence, he indicated that he believed that the conditions of service at Ubon remained similar at all times.

### **Summary of Claims of the Directorate of Honours and Awards**

16. In their submission, the Directorate provided an explanation for the Nature of Service at the Royal Thai Air Base Ubon in the 1960s. In 2009 the *Defence Ubon Review* examined the Nature of Service at Ubon during various periods of RAAF service at that base. RAAF service at Ubon from the initial deployment of 31 May 1962 to 27 July 1962 met the criteria for re-classification as 'Special Duty' under the *Repatriation (Special Overseas Service) Act 1962* and recommended that the service should be re-classified as 'Warlike Service' under the *Veterans' Entitlements Act 1986*. The *Defence Ubon Review* stated that 'the crisis eased somewhat with the signing of the Geneva Agreement on 23 July 1962.'

17. After a request from the United States Government, Australia decided to retain the RAAF contingent at Ubon. Again the *Defence Ubon Review* assessed the service between 28 July 1962 and 24 June 1964 as not being 'Warlike Service' and the service in this period was to remain classified as 'operational service'. Mr Hibberd served at Ubon during this period and he was awarded the Australian Service Medal 1945-75 with Clasp 'Thailand' for that 'operational service'.

18. Further, in answer to Mr Hibberd's question "what actually changed", the *Defence Ubon Review* has stated that 'a significant change to the situation of the RAAF Ubon contingent occurred in June 1965', as the general situation in South East Asia had deteriorated in late 1964 and early 1965. The deployment of the United States Air Force in Thailand changed from air defence to an increased aerial commitment to the Vietnam War, thus possibly attracting further attention from China and North Vietnam, who may have viewed the United States in Thailand as participants in an offensive operation. This in turn may have made the Air Base at Ubon more dangerous for the RAAF personnel stationed there. Consequently the RAAF Ubon contingent's role and their Rules of Engagement were revised commencing from 25 June 1965.

## **The Tribunal's Findings**

19. In conducting this review, the Tribunal is bound by the eligibility criteria that govern the award of the AASM 1945-75 with Clasp 'Thailand'. Accordingly, in order for Mr Hibberd to be eligible it must be established that his period of service met with the eligibility criteria as stated in the Declarations and Determinations made under the Regulations.

20. There is no dispute that Mr Hibberd served in Ubon, Thailand from 11 September 1963 to 3 January 1964. However this period of service is clearly in the window that has been determined by the eligibility criteria to be Operational Service not Warlike Service.

21. In conclusion, for the reasons set out above, the Tribunal finds that Mr Hibberd is not eligible for the AASM 1945-75 with Clasp 'Thailand'.

22. This conclusion does not in any way diminish the commitment and contribution Mr Hibberd made to his country for the period he did serve.

## **DECISION**

23. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Bradley John Hibberd is not eligible for the award of the Australian Active Service Medal 1945-75 with Clasp 'Thailand'.